THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :14.03.2007

+ **WP(C) No.18130-31/2005**

SHRI AKSHOY KUMAR PAUL & ANOTHER ...Petitioners

- versus -

THE NEW INDIA ASSURANCE COMPANY ...Respondent

Advocates who appeared in this case:
For the Petitioners : Mr S.K. Ghosh
For the Respondent : Mr Pankaj Seth.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. The case of the petitioners is that their Mediclaim policy was not renewed on the ground that the petitioner had suffered heart ailments during the pendency of the policy. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of ***Biman Krishan Bose v. United India Assurance Co. Ltd*: 2001 (6) SCC 477**, ***Mukut Lal Duggal v. United India Insurance Co. Ltd*: 117 (2004) DLT 74** and ***Ashok Kumar Dhingra v. Oriental Insurance Company Ltd & Ors*: AIR 2004 Delhi 161**.

2. The learned counsel for the respondents raised two contentions. The first contention was that this petition was not maintainable inasmuch as the mediclaim policy is a contract between the insured and the insurer and that falls in the realm of private law and no public law element is involved. The second contention raised by the learned counsel for the respondent [Insurance Company] is that the condition of exclusion of cardiac ailments was consented to by the petitioner No.1 when the mediclaim policy was renewed w.e.f. 11.08.2003 and again when it was renewed w.e.f. 11.08.2004 to 10.08.2005. Therefore, according to the learned counsel for the respondent, the petitioners, having once consented, cannot go back on this.

3. In rejoinder, the learned counsel for the petitioners submitted that the question of maintainability has already been settled in ***Ashok Kumar Dhingra*** *(supra)* as also pointed out in ***Mukut Lal Duggal*** *(supra)*. With regard to the question of renewal, he placed strong reliance on the case of ***Mukut Lal Duggal*** *(supra)* in contending that renewal should be on the same terms and conditions and not by incorporating exclusion clauses which exclude those ailments which have afflicted the insured during the period of the insurance cover. The learned counsel for the petitioner also pointed out that the consent that was given in 2003 and 2004 for excluding the cover with regard to cardiac ailments was not free consent, but was under compulsion inasmuch as if that consent had not been given, then the petitioners would have no mediclaim insurance cover at all even in respect of other ailments. So, it was not really a choice which the petitioners could have freely exercised and, therefore, the petitioners cannot be bound by such a consent which was not willful.

4. The factual background is that the petitioners had obtained the mediclaim policy for the first time on 11.08.1999, without any restrictions. The same was renewed in 2000, 2001 and 2002 without any difficulty. Unfortunately, in February, 2003, the petitioner No.1 suffered a heart attack and was hospitalised. He preferred a claim under the mediclaim policy which was paid by the insurance company. In August, 2003, when the petitioners sought renewal of the mediclaim policy, the same was renewed, but after excluding the cover for cardiac ailments of the petitioner No.1. Such renewal was continued, subject to exclusion clause for the next year also. In August, 2005, when the petitioners sought renewal without the condition of exclusion, the insurance company refused to do so and insisted that the exclusion clause should continue to operate. It is at that stage that the petitioners approached this court by way of filing this writ petition.

5. As regards the question of maintainability, nothing further needs to be said inasmuch as a petition of this kind has been found to be maintainable by virtue of a decision of this court in the case of ***Ashok Kumar Dhingra*** *(supra)* and as noted in ***Mukut Lal Duggal*** *(supra)*. With regard to the second issue of renewal, subject to conditions, the same is also not debatable at least insofar as this court is concerned. This is so because in ***Mukut Lal Duggal*** *(supra),* it was conclusively held in paragraph 39 (2) that:-

> "39. For the foregoing reasons, we conclude as under:
>
> (1) xxxxx xxxxx xxxxx xxxxx
>
> (2) In case of renewal without break in the period, the Mediclaim Insurance Policy will be

> renewed without excluding any disease already covered under the existing policy which may have been contracted during the period of the expiring policy. Renewal of Mediclaim Insurance Policy cannot be refused on the ground that the insured had contracted disease during the period of the expiring policy so far as the basic sum insured under the existing policy is concerned."

6. Clearly, the renewal of an insurance policy has to be done without excluding any disease already covered under the existing policy which may have been contracted during the period of the policy. It is clear that renewal of a mediclaim insurance policy cannot be refused on the ground that the insured had contracted a disease during the period of the expiring policy so far as the basic sum insured under the existing policy is concerned. The question of loading premium was also decided in the case of ***Ashok Kumar Dhingra*** *(supra)* which is open to the insurance company in view of the said decision. However, the insurance company cannot refuse renewal of a mediclaim policy on the ground that during the pendency of the expiring policy, the insured had contracted a disease.

7. The only question, therefore, that survives is whether the consent given by the petitioner was willful or not. According to the insurance company, the petitioner No.1 himself approached the insurance company and asked the insurance company to exclude the cover for cardiac ailments after having suffered from a heart attack in February, 2003. According to the learned counsel for the petitioner, such an act would not be of any prudent man. It is obvious, according to the learned counsel for the petitioner, that the petitioner was forced and / or pressurised into consenting to

the exclusion of the cover for cardiac ailments. Otherwise, he and his wife would be left without any insurance cover at all. I am in agreement with the submissions made by the learned counsel for the petitioners that the consent that was allegedly given by the petitioners in August, 2003 and continued in August, 2004 was not free or willful consent. Therefore, they would not be bound by the same.

8. This being the position, the insurance company would be governed by the decision in ***Mukut Lal Duggal*** *(supra)* and would have to renew the policy for August, 2005 to 2006 and consequently for August, 2006 onwards provided the petitioner pays the premium amount.

This writ petition is allowed accordingly.

BADAR DURREZ AHMED
(JUDGE)

March 14, 2007
δυττ